

IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1858.—Received from the Court of Claims.

DECEMBER 13, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

**REPORT.**

*To the honorable the Senate and House of Representatives of the United States in Congress assembled :*

The Court of Claims respectfully presents the following documents as the report in the case of—

NANCY M. JOHNSON, ADMINISTRATRIX OF WALTER R. JOHNSON, AND EMILIE G. JONES, EXECUTRIX OF THOS. P. JONES, DECEASED, *vs.* THE UNITED STATES.

1. The petition of the claimant.
8. Letters testamentary of the claimants, transmitted to the House of Representatives.
3. Evidence in the case, transmitted to the House of Representatives.
4. Opinion of the Court.
5. Bills in favor of each of the claimants.

By order of the Court of Claims.

[ L. S. ] In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this 7th day of December, 1858.

SAM'L H. HUNTINGTON.

*Chief Clerk Court of Claims.*

*To the honorable the Judges of the Court of Claims :*

The petition of Nancy M. Johnson, widow of Walter R. Johnson, deceased, and Emilie G. Jones, executrix and sole devisee of Thomas P. Jones, deceased, respectfully sheweth unto your honors:

That the said Thomas P. Jones and Walter R. Johnson were, together with Charles Reeder, appointed members of a "board of examiners to make experimental trials of inventions and plans to prevent the explosion of steam boilers;" that they were appointed by the Secretary of the Navy in April, 1843, and on the 14th day of that month entered upon the duties assigned to them thereby; that in the prosecution of those duties they continued until the 30th day of March, 1844; that in the letter appointing them they were informed by the Secretary of the Navy that their compensation would be three hundred dollars per month, and that amount was paid to them until the month of August, 1843, when they were informed that the appropriation devoted to such experimental trials was exhausted, and that there was, consequently, no fund out of which they could be paid.

And your petitioners further represent that, deeming the experiments about which they were engaged to be of very great importance, and feeling that if at that time they ceased their labors the time and money already spent by them would be lost to the government, they, with the advice of the Secretary, continued their experiments until completed, on the 30th day of March, 1844; and on the 17th of June of that year, before the close of the session in which the act required that it should be presented, they presented a report to Congress of the experiments made, and the results obtained by them.

And your petitioners further show unto your honors that on the 18th of May, 1844, the House of Representatives passed a resolution requesting the Secretary of the Navy to assign reasons why the board of examiners, &c., had not presented their report, as had been promised should be done during that session; that the Secretary of the Navy, on the 22d of May, 1844, communicated to Congress that the commissioners had been urged since the commencement of the session to present their report, &c.; that he believed they had used all diligence in bringing their examinations to a close, &c.; that thus, by both the House of Representatives and the Secretary of the Navy, were the board of examiners recognized after the date when the appropriation was exhausted, as was reported to them, and that after this date, that is to say, after the 17th of June, 1844, when the examiners made their report to Congress, that report was accepted by Congress, printed, and distributed, as your petitioners have every reason to believe, widely through the country.

And your petitioner, Nancy M. Johnson, respectfully represents that she is the widow and sole devisee of the said Walter R. Johnson, and as such possessed of the rights of the said Walter R. Johnson, deceased, and the proper person to represent his said claim in this honorable Court; and your petitioner, the said Emilie G. Jones, respectfully represents that she is the executrix and sole devisee of the said Thomas P. Jones, deceased, and as such entitled to represent his claim aforesaid before your honorable Court.

And your petitioners further represent, that this claim was presented to Congress during the twenty-ninth Congress, as your petitioners believe for the first time, and that it has been before every Congress since; that it has been reported upon by committees

of the said Congresses frequently, and generally favorably; that it passed one or the other branch of Congress, but never both during the same session; and that the matter is still before the Senate of the United States, in whose archives your petitioners' papers are all filed, and cannot be placed before your honors until an order to that effect can be obtained.

And your petitioners further show unto your honors, that the said Walter R. Johnson and Thomas P. Jones were entitled to pay at the rate of three hundred dollars per month, for the whole time that they served the government under the appointment hereinbefore mentioned, and for whatever other expenses they incurred by reason of, and in the performance of their duties under said appointment; and to enable them, as the representatives of said parties to obtain this their right, they pray the assistance of this honorable Court, and so, as in duty bound, they will ever pray, &c.

N. M. JOHNSON.

DISTRICT OF COLUMBIA, }  
County of Washington. } ss.

Before the subscriber, a Notary Public, in and for the County aforesaid, in the District of Columbia, personally appeared Nancy M. Johnson, and made oath that the facts stated in the foregoing petition are true to the best of her knowledge and belief.

N. M. JOHNSON.

Sworn to and subscribed before me, this first day of August, 1855.

JOHN F. WEBB, *Notary Public*.

The memorial in this case was presented to Congress at the first session of the twenty-ninth Congress, and was referred to the Committee of Ways and Means.—(See Jour., p. 276, Jan. 20, 1846.) An amendment was offered to the deficiency bill at that session providing for the payment of the claim, but was rejected, (Jour., p. 610.) At the same session, May 7, 1846, (Jour., p. 766,) the memorial was referred to the Committee on Naval Affairs, and subsequently withdrawn, August 10, 1846.—(Jour., p. 1299.)

The same session the memorial was offered in the Senate, and referred to the Committee on Claims, May 11, 1846, (Senate Jour., p. 279,) and was withdrawn August 8, 1846, (Senate Jour., p. 508.)

The separate petition of Walter R. Johnson was presented at the same session to the House, and referred to the Committee on Naval Affairs, March 10, 1846.—(See Jour., p. 511.)

At the thirtieth Congress, first session, the claim was reported favorably upon by the Committee on Naval Affairs, with a bill which was amended, and passed on the 8th of April, 1848.—(See House Jour., p. 665.) No action in Senate.

At the thirty-first Congress the claim was referred to the Committee on Claims in the Senate, (see Jour., p. 36,) and was reported

upon favorably, (see Jour., p. 76,) was considered and recommitted to the committee, reported with an amendment, and passed.—(See pp. 602, 604, and 619.) In the House, September 10, 1850, and September 14, 1850, (see Jour., p. 1438,) the Senate bill was read a second and a third time, committed to a Committee of the Whole House, made the order for the next day, and nothing was done.

Thirty-second Congress, the claim was at the first session referred to the Committee on Claims, Senate, (see Jour., p. 191,) and subsequently upon leave withdrawn, and nothing done.

Thirty-third Congress, first session, the documents were referred to the Committee on Naval Affairs in the Senate, and nothing done.—(See Jour., p. 57.) At the second session, on the 14th of February, the committee were discharged from further consideration of the claim.

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#### IN THE COURT OF CLAIMS.

#### WALTER R. JOHNSON'S ADMINISTRATRIX AND THOMAS P. JONES' EXECUTRIX *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

By the second section of the joint resolution, approved August 31, A. D. 1842, it was provided, "that the Secretary of the Navy be, and he is hereby, authorized to make such experimental trial of the several inventions of Thomas M. Easton, Ethan Campbell, Aaron Quinby, or either of them, or of other persons, to prevent the explosion of steam boilers, as may be necessary to test their value and utility as applicable for the purposes aforesaid to the steamships of the United States; and the sum of six thousand dollars is hereby appropriated therefor out of the fund" appropriated by the act of the eleventh of September, eighteen hundred and forty-one, for experiments connected with the naval service of the United States. (5 Stat. at L., p. 585, No. 12.)

By the fifth section of the act of Congress, approved March 3, A. D. 1843, ch. 94, it is provided, "that in execution of the authority vested in him by the second section of the joint resolution 'authorizing experiments to be made for the purpose of testing Samuel Colt's submarine battery, and for other purposes,' approved August thirty-first, one thousand eight hundred and forty-two, the Secretary of the Navy shall appoint a board of examiners, consisting of three persons of thorough knowledge as to the structure and use of the steam engine, whose duty it shall be to make experimental trial of such inventions and plans designed to prevent the explosion of steam boilers and collapsing of flues as they may deem worthy of examination, and report the result of their experiments, with an expression

of their opinion as to the relative merits and efficacy of such inventions and plans, which report the Secretary shall cause to be laid before Congress at its next session. It shall also be the duty of said examiners to examine and report the relative strength of copper and iron boilers of equal thickness, and what amount of steam to the square inch each, when sound, is capable of working with safety; and whether hydrostatic pressure, or what other plan is best for testing the strength of boilers under the inspection laws; and what limitations as to the force or pressure of steam to the square inch, in proportion to the ascertained capacity of a boiler to resist, it would be proper to establish by law for the more certain prevention of explosions."—(5 Stat. at L., p. 627.)

On the 10th day of April, A. D. 1843, Walter R. Johnson and Thomas P. Jones, respectively, were appointed by the Secretary of the Navy, members of the board of examiners authorized by the last recited act, and on the 14th day of April, A. D. 1843, they severally accepted their appointments and entered upon the discharge of their duties. The compensation of each of them was fixed by the Secretary of the Navy at the rate of three hundred dollars per month, to commence from the date of their respective appointments.

The petitioners allege that the above named Thomas P. Jones and Walter R. Johnson continued in the prosecution of their duties until the 30th day of March, A. D. 1844. It does not expressly appear from the evidence how long they were employed; but, in obedience to a resolution of the House of Representatives, passed on the 18th of May, A. D. 1844, the Secretary of the Navy, on the 22d of May, A. D. 1844, reported to Congress that the examiners had been urged, since the commencement of that session of Congress, to present their report, and that he believed that they had used all diligence to bring their examinations to a close. The report was made to Congress on the 17th day of June, A. D. 1844. By that report it appears that on the 6th day of January, A. D. 1844, they were still engaged in their work. Now, it is self-evident, we think, "that a minute and careful computation, and a strict comparison of all the results," was "indispensable to give value to researches such as were consigned to" these examiners. It is also indubitable that after the conclusion of their experiments they must have been engaged a considerable time, "either in making out descriptions, procuring the necessary drawings, or making the calculations and tabular statements of their various observations." Their report, which was the last duty required of them, was not ready on the 22d day of May, A. D. 1844. From these facts, we think it a just and reasonable conclusion, that the decedents, Johnson and Jones, were engaged for the full period which has been alleged. They were, therefore, employed from the 14th day of April, A. D. 1843, till the 30th of March, A. D. 1844, a period of eleven and a half months.

The examiners received compensation for their services up to the 14th day of August, A. D. 1843, and the appropriation made by the joint resolution of the 31st of August, A. D. 1842, being then exhausted, no further compensation was afterwards made to them.

The petitioners claim that their decedents respectively were entitled to compensation for the whole time they were engaged in and about the objects contemplated by the act of March 3, A. D. 1843. But it has been urged that the power of the Secretary of the navy to employ them was merely commensurate with the appropriation made by the joint resolution of August 31, A. D. 1842, and that their right to compensation and authority to proceed with their work ceased as soon as the appropriation was exhausted.

By the sixth section of the act of Congress approved May 1, A. D. 1820, it is provided as follows: "No contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation adequate to its fulfilment."—(3 Stat. at Large, page 568.

The examiners were either officers or employés. If they were officers then this is not a case of contract, and consequently the act of 1820 has no application to it. Their office, too, being created for a special purpose, would continue until that purpose was accomplished. Moreover, as their salaries were not prescribed by the statute, they were, of necessity, left to the sound discretion of the appointing officer, the Secretary of the Navy, and would continue during the continuance of the examiners in office. The last duty required of them by the act of 1843 was to make report to the Secretary of the Navy. This duty was performed on the 17th day of June, A. D. 1844. If, therefore, the examiners were officers, they continued in office and were entitled to their salaries till the day last mentioned. But we do not adopt this view, nor do the petitioners claim for their decedents the compensation to which they would be entitled under it.

We are of the opinion that the examiners were employés, and not officers. Under the act of 1843, the Secretary of the Navy was required to "*appoint a board of examiners.*" The word "appoint" in that act is used in the sense of *employ*, and means merely *to procure by contract*, or, *to contract with*. Hence it is obvious that there was a contract between the United States and the examiners, and that it was made by the Secretary of the Navy "under a law authorizing the same." It was therefore valid under the act of 1820. It is not pretended that the compensation agreed upon between the parties was unreasonable, or that the examiners, Johnson and Jones, did not do the work prescribed by the act of 1843, and required of them by the contract. Our opinion is, that, upon performing the duty required of them, they became entitled to full compensation therefor, notwithstanding it might exceed the appropriation which had been made.

We shall therefore report a bill in favor of each of the petitioners for the sum of *two thousand two hundred and fifty dollars*.

A BILL for the relief of Nancy M. Johnson, administratrix of Walter R. Johnson, deceased.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he hereby is directed, out of any money in the treasury not otherwise appropriated, to pay to Nancy M. Johnson, administratrix of Walter R. Johnson, deceased, the sum of two thousand two hundred and fifty dollars in full for the services of the said Walter R. Johnson as a member of the Board of Examiners, appointed by the Secretary of the Navy, under the provisions of the act of Congress, approved March 3, 1843, entitled an act to modify the act entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," approved July 7, 1838.

A BILL for the relief of Emilie G. Jones, executrix of Thomas P. Jones, deceased.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he hereby is directed, out of any money in the treasury not otherwise appropriated, to pay to Emilie G. Jones, executrix of Thomas P. Jones, deceased, the sum of two thousand two hundred and fifty dollars in full for the services of the said Thomas P. Jones as a member of the Board of Examiners, appointed by the Secretary of the Navy, under the provisions of the act of Congress, approved March 3, 1843, entitled an act to modify the act entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," approved July 7, 1838.

